



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/25/06

AGENDA ITEM 5

WORK SESSION ITEM

TO: Mayor and City Council
FROM: Chief of Police
SUBJECT: Massage Establishments and Massage Technicians Ordinance

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance relating to massage establishments and massage technicians.

BACKGROUND:

The ordinance relating to massage establishments and massage technicians was adopted in 1977 and last amended in 1978 to improve the ability of the city to deal with massage establishments that functioned as fronts for illicit sexual activity, and to minimize the number of situations where the city would have to use the cumbersome Red Light Abatement process.

Legitimate massage as an alternative therapy has increased in both popularity and recognition by medical practitioners in recent years. While our existing ordinance allows for legitimate massage therapies it has also proven to provide opportunities for unscrupulous and sometimes organized operators to again open businesses which are little more than "fronts" for illicit activity.

It is important for the protection of the health, welfare, and safety of the community that the current inadequacies in the ordinance be addressed.

Legitimate massage businesses and technicians will find increased abilities and opportunities to provide their services to the community. Processing and permitting will be managed by the police department and coordinated with other city departments as appropriate to the type of license sought.

Illegitimate operators will be more easily identified and denied the required permits. The ordinance will prohibit specific activities, such as the unsolicited inappropriate fondling of massage customers, which has been reported at some illegitimate establishments, but is not prohibited by state law. Staff has also received reports from legitimate massage establishments

and therapists that some clients have mistaken them for businesses and persons that engage in illicit activities.

There are also incidents where acupressure centers have opened in the city and offered what are essentially massage services. Acupressure is not covered in the existing ordinance but is regulated in the proposed ordinance. One such center operating in Hayward was recently closed after two employees were arrested for offering to perform illicit activities.

The revised ordinance makes the permittee of a massage establishment responsible for all prohibited or required conduct and acts committed on the permitte's premises, whether the permittee is personally involved or the prohibited or required conduct is committed by a direct employee, contract employee, or customer.

Staff met with the supervising Deputy District Attorney for our area and discussed this matter. He indicated that a revision to our ordinance would be an appropriate method to prohibit illicit activity that is not currently covered by state law. He additionally advised staff that once a revised ordinance was adopted the District Attorney's Office would file criminal charges based on proven violations of a revised ordinance.

In March, staff met with massage establishment permittees and massage technicians to discuss the amendments to the ordinance under consideration. There is significant support from those in the legitimate massage business to strengthen the educational requirements and regulations applicable to the trade. They believe, as do we, that protecting the public from illegitimate service providers benefits the residents of the city and all those involved in the legitimate message field.

Prepared by:


Bob Palermini, Community Policing Captain

Recommended by:


Lloyd Lowe, Chief of Police

Approved by:


Jesús Armas, City Manager

Exhibits: Draft Ordinance

ORDINANCE NO.

ORDINANCE AMENDING CHAPTER 6, ARTICLE 10 OF THE
HAYWARD MUNICIPAL CODE PERTAINING TO MASSAGE
ESTABLISHMENTS AND MASSAGE THERAPY
TECHNICIANS

Section 1. Upon the adoption of this ordinance, Article 10 of Chapter 6 of the Hayward Municipal Code is hereby repealed and, in substitution thereof, a new Article 10 of Chapter 6 of the Hayward Municipal Code is hereby enacted to read as follows:

"SEC. 6-10.00 TITLE. This ordinance shall be known as the Massage Permit Ordinance.

"SEC. 6-10.01 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- "(a) The City of Hayward is authorized by virtue of the Constitution of the State of California, and section 51031 of the California Government Code, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage therapists and imposing reasonable conditions on the operation of the massage establishment.
- "(b) There is significant risk of injury to massage clients by improperly trained and/or uneducated massage therapists and this Article provides reasonable safeguards against injury and economic loss.
- "(c) The permit requirements and restrictions imposed by this Article are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Hayward.

"SEC. 6-10.02 DEFINITIONS. For the purpose of this Article, certain words and phrases shall be construed herein as set forth in this section, unless it is apparent from the context that a different meaning is intended:

- "(a) 'Acupuncture.' Whereas acupuncture is described as the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electro acupuncture, cupping, and moxibustion; 'Acupressure' is based on a theory similar to acupuncture except that it stimulates acupuncture points by the application of pressure rather than needling.

- “(b) ‘Adult-oriented merchandise.’ Any sexually-oriented implements, paraphernalia, or novelty items, such as but not limited to: condoms and sexually-oriented items that are designed or marketed primarily for the stimulation of human genital organs.
- “(c) ‘Applicant.’ In the case of a massage establishment permit, means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of the massage establishment, who applies to obtain a permit under this Article. In the case of a massage therapy technician permit, “applicant” means an individual who applies for a permit under this Article.
- “(d) ‘Chief of Police.’ The Chief of Police of the City of Hayward or his or her designee.
- “(e) ‘Employee.’ Includes any owner, partner, operator, manager, supervisor or worker, (whether part-time, full-time, temporary, permanent, or independent contractor) whether paid or not, who renders personal services of any nature in the operation of a massage establishment.
- “(f) ‘Massage therapy.’ The treatment of the human body by soft tissue manipulation using a variety of manipulative techniques, which may include any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations. This may include body/mind spirit integration, personal growth, physical or emotional relaxation and the relief of somatic pain or dysfunction. As used in this Article, massage therapy includes bodywork and somatic therapies.
- “(g) ‘Massage establishment.’ Any establishment having a fixed place of business where any person provides, receives, or permits others to provide or receive massage therapy services. Massage establishment includes, but is not limited to, any beauty salon, hot tub or sauna facility, health and fitness center or tanning salon in which massage therapy services are provided to customers.
- “(h) ‘Massage therapy technician.’ Any person who provides massage therapy services to another person.
- “(i) ‘Managing employee.’ Any employee of a massage establishment who has been designated by the massage establishment permittee to manage the business.
- “(j) ‘Out-call massage therapy.’ A massage therapy performed or administered for

money or other consideration by a licensed massage practitioner at a location other than a licensed massage establishment.

- “(k) ‘Permit.’ The permit to engage in the practice or business of massage therapy as required by this Article.
- “(l) ‘Permittee.’ Any person possessing a permit required and issued under this Article.
- “(m) ‘Person.’ Any individual, co-partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.
- “(n) ‘Recognized school of massage therapy.’ Any school or institution of learning, which has been approved pursuant to applicable State or Federal law or regulation, or any school which requires a resident course on the theory, ethics, history, practice, methods, profession or work of massage therapy, including the study of anatomy and physiology and hygiene, and demonstration and practice of massage therapy techniques, and which provides a diploma or certificate of graduation upon successful completion of such course of study or course work recognized by national professional massage or body therapy organizations. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or a course of massage therapy not approved by the California Department of Education shall not be deemed a ‘recognized school of massage therapy’.

“SEC. 6-10.03 PERMIT REQUIREMENT.

“(a) Massage Establishment Permit:

- (i) Except as otherwise provided in section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the city, the operation of a massage establishment without first having obtained a massage establishment permit issued by the Chief of Police pursuant to this Article. A separate permit shall be obtained for each separate massage establishment.
- (ii) Prior to commencing operations pursuant to a Massage Establishment Permit issued by the Chief of Police, applicants must also obtain appropriate land use approvals pursuant to the City’s Zoning Ordinance.

“(b) Massage Therapy Technician Permit: Except as otherwise provided in Section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on the function of a massage therapy technician without first having obtained a massage therapy technician permit issued by the Chief of Police pursuant to this Article.

“(c) Provisional Permit: The Chief of Police may issue a provisional permit to any applicant, for a period not to exceed six months, if the applicant requires experience in the massage therapy profession for the purpose of eligibility for a certification examination as provided in subsection 6-10.05(a) of this Article or educational requirements for a recognized school of massage therapy, and the applicant shows proof of satisfactory completion of at least 100 hours of a nonrepetitive curriculum in anatomy, physiology, hygiene, sanitation, and massage therapy theory, history, ethics, and practice from a recognized school of massage therapy.

“(d) A permit issued under this Article does not authorize the permittee to practice massage therapy until the permittee has complied with all business license requirements, zoning/planning requirements, and all other applicable federal, state, and City of Hayward laws and regulations.

“(e) Persons practicing acupressure under the direction of a licensed State of California acupuncturist shall obtain a massage therapy technician permit as required in this Article.

“SEC. 6-10.04 PERMIT EXEMPTIONS.

“(a) The permit requirements of this Article shall not apply to the following persons while engaged in the performance of their duties:

“(1) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice their respective professions in the State.

“(2) Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses.

“(3) Hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State.

“(4) Accredited high schools, junior colleges, colleges, or universities whose coaches and trainers are acting within the scope of their employment.

“(5) Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employments or within the scope of their curriculum.

“(6) Trainers of amateur, semiprofessional or professional athletes or athletic

teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons, or similar single occurrence athletic or recreational events.

"SEC. 6-10.05 EDUCATIONAL, CERTIFICATION, AND ASSOCIATION REQUIREMENTS.

- "(a) Each permittee shall either:
 - "(1) Possess an original diploma, original certificate of graduation, or other written proof, including certified transcripts, acceptable to the Chief of Police, from a recognized school of massage therapy, college, junior college, or university which shows satisfactory completion of at least 500 hours of a nonrepetitive curriculum which shall include formal education and training in massage therapy and/or bodywork, ethics, anatomy, and physiology; and related education and/or professional experience; or
 - "(2) Certification pursuant to the National Certification Board for Therapeutic Massage and Bodywork.
- "(b) The permittee shall present original documents showing such certification at the time of application.
- "(c) Each permittee shall be a member, in good standing, of a state or national professional association devoted to the massage therapy specialty and therapeutic enhancement approach. The organization shall meet the following requirements:
 - "(1) The organization or association promotes participation in continuing education programs as a condition of continuing membership;
 - "(2) The organization or association has an established code of ethics and has enforcement procedures for the suspension and revocation of membership of persons violating the code of ethics; and
 - "(3) The organization or association is open to members of the general public, meeting the requirements for membership on a regional, statewide, or national basis, and is devoted to serving the interests of its members, the public, and the profession.
- "(d) Each applicant for a massage establishment permit who signs a declaration under penalty of perjury that such applicant will not personally engage in the practice of massage therapy is exempt from the educational, certification, and association, requirements set forth in this sub-section.

"SEC. 6-10.07 MESSAGE ESTABLISHMENT PERMIT APPLICATION AND

FEE.

- "(a) Each applicant for a massage establishment permit shall file a written application with the Chief of Police on a form provided by the Police Department. The application shall be forwarded to the Planning Director to determine if the use is allowed in the zoning district where the massage establishment is proposed to be located. A massage establishment permit does not authorize the permittee to provide massage therapy services, and it is unlawful to do so without a valid massage therapy technician permit issued by the Chief of Police.
- "(b) Each application shall be accompanied by a nonrefundable fee, in an amount established by resolution of the City Council. The application fee shall be used to defray, in part, the costs of the investigation and report, and is not made in lieu of any other fees or taxes required under this Code. Applicants are required to make payment to the Department of Justice for fingerprinting services as required by this Article. A copy of the receipt for the nonrefundable fee shall accompany the application. Separate checks are not required to pay the required fees as outlined in this Article.
- "(c) Each applicant shall submit the following information in the application under penalty of perjury:
 - "(1) The full, true name under which the business will be conducted.
 - "(2) The present or proposed address where the business is to be conducted.
 - "(3) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number or identification number, Social Security number, present residence address and telephone number, gender, height, weight, color of hair, and color of eyes.
 - "(4) The names and addresses of all persons financially interested in the business.
 - "(5) The applicant's two most recent street addresses and the dates of residence at each address.
 - "(6) The name, street address, and telephone number of other businesses in which the applicant has owned or been employed with within the past seven years. This shall include the dates of employment, positions held by the applicant, and a contact person at each location. Applicant shall disclose or declare that within the seven years preceding submission of the application, the owner, operator, manager, and/or responsible managing officer/employee has not:

- “(i) Had a massage establishment, massage therapy technician, or other similar permit or license denied, suspended, or revoked by the city, or any other federal, state or local agency;
 - “(ii) Engaged in conduct or operated a massage therapy or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this Article; or
 - “(iii) Owned or managed a massage establishment or similar establishment where persons required to be licensed were allowed to work without the required license or permit.
- “(7) A statement of the permit history of the applicant which identifies whether or not such person has ever held a professional or vocational license or permit, other than as required under this Article, issued by any agency, board, city, county, territory, or state; the date of issuance of such permit or license; whether or not the permit or license is still in effect; if the permit or license is no longer in effect, whether or not it was revoked or suspended, and if so, the reason(s) therefore. The name and location of the jurisdiction or agency, which suspended or revoked such license, certificate, permit, or other authorization shall also be included.
- “(8) The name and street address of any other massage business operated or managed by the applicant during the last seven years.
- “(9) A statement whether the applicant intends to personally provide massage therapy services at the business. The applicant for a massage establishment permit is required to fulfill the requirements of section 6-10.05 if that person intends to provide massage therapy services.
- “(10) Except as provided in section 6-10.04, an original diploma, certificate of graduation, or other written proof, including certified sealed transcripts, acceptable to the Chief of Police or written proof of the applicant’s successful completion of the National Certification Board for Therapeutic Massage and Bodywork examination showing that the applicant has met the requirements of section 6-10.05.
- “(11) Except as provided in section 6-10.04, written proof that the applicant is a member, in good standing, of a state or national professional association devoted to the massage therapy specialty and therapeutic enhancement approach as required by subsection 6-10.05(c).
- “(12) Applicant’s criminal convictions in California or any other jurisdiction for offenses other than traffic violations within ten years before the date of the application. For the purposes of this subsection, the term ‘applicant’ shall

apply to:

- “(i) an individual if the applicant is an individual;
 - “(ii) any officers, directors, stockholders holding more than 5 percent of the stock of the corporation, or the managing responsible officer, if the applicant is a corporation; and
 - “(iii) a partner or the managing responsible officer, if the applicant is a partnership.
- “(13) The name, street address, telephone number, and date of birth of each massage therapy technician or employee who is or will be employed at the massage establishment, regardless of the nature of the employment.
- “(14) The name, street address, and telephone number of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.
- “(15) Documentation to prove that the applicant has a lawful right to work in the United States, to include but not limited to: Department of Justice Immigration and Naturalization Service Employment Authorization Document.
- “(16) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.
- “(17) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within 90 calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.

- “(18) Two recent, identical, passport-size, color photographs of the applicant.
- “(19) Fingerprints taken by a representative of the Hayward Police Department and submitted to the Department of Justice for processing pursuant to this Article.
- “(20) Certificate from a physician licensed to practice in the State of California stating that the applicant has, within 30 calendar immediately before the filing of the application, tested negative for tuberculosis. If the applicant has tested positive, the applicant must submit documentation from a physician licensed to practice in the State of California that the tuberculosis is not in an active state and the applicant is asymptomatic. A certificate is not required if the massage establishment applicant does not intend to provide massage therapy services.
- “(21) Written authorization for the city, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible managing officer/employee of the massage establishment.
- “(22) Such other identification and information shall be provided as required by the Chief of Police, necessary to discover the truth of the matters specified and required in the application.

“SEC. 6-10.08 MASSAGE THERAPY TECHNICIAN PERMIT APPLICATION AND FEE.

- “(a) Each applicant for a massage therapy technician permit shall file a written application with the Chief of Police on a form provided by the Police Department.
- “(b) Each application shall be accompanied by a nonrefundable fee, in an amount established by resolution of the City Council. The application fee shall be used to defray, in part, the costs of the investigation and report, and is not made in lieu of any other fees or taxes required under this Code. Applicants are required to make payment to the Department of Justice, for fingerprinting services, as required by section 6-10.07(c)(19). A copy of the receipt for the nonrefundable fee shall accompany the application. Separate checks are not required to pay the required fees as outlined in this Article.
- “(c) Each applicant shall submit the following information and documentation under penalty of perjury:
 - “(1) All information required by section 6-10.07(c), except subsections: 6-10.07(c)(1), 6-10.07(c)(2), 6-10.07(c)(13), 6-10.07(c)(14), 6-10.07(c)(16), and 6-10.07(c)(17); and
 - “(2) Each applicant shall provide written authorization for the City of Hayward,

its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant to comply with section 6-10.07(c)(23).

- “(3) The full name, street address, and telephone number of each business premises in which the massage therapy technician administers massage therapy.

“SEC. 6-10.09 APPLICATION REVIEW. The application and supplementary material shall be reviewed by the Chief of Police. If it is clear from the face of the application and supplementary material that the applicant is not qualified for the permit sought, or if the required fee has not been paid, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the Chief of Police shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

- “(a) The Hayward Police Department shall take a full set of the applicant’s fingerprints, and submit the fingerprints to the Department of Justice for evaluation. Upon receipt of the report from the Department of Justice, the Chief of Police shall review the criminal history (if any) of the applicant;
- “(b) The Chief of Police may conduct additional investigations in a manner authorized by law when necessary to determine if the applicant meets the qualifications for a permit pursuant to this Article; and
- “(c) Upon receipt of an application for a massage establishment permit, the Chief of Police shall refer the application to other City of Hayward departments, as appropriate, for review of the application and inspection of the premises to ensure compliance with applicable local, state and federal laws and regulations, including, but not limited to, building, health, and fire safety regulations.

“SEC. 6.10.10 PERMIT ISSUANCE OR DENIAL.

- “(a) The Chief of Police shall issue or deny the application for a massage establishment or technician permit within 60 calendar days of a completed application. When necessary, the Chief of Police may extend the time to issue or deny the permit.
- “(b) The Chief of Police shall deny a permit if any of the following circumstances exist:
 - “(1) The application is incomplete and/or required supplementary material is not submitted within 30 calendar days of the date the material is requested;
 - “(2) The applicant does not have sufficient proof of the required educational or certification requirements and association qualifications pursuant to section 6-10.05 of this Article, unless the applicant is exempt from these

requirements as provided in section 6-10.04;

- “(3) The operation as proposed by the applicant would not comply with all applicable ordinances and laws, including, but not limited to, the city’s building, health, and fire safety ordinances;
- “(4) The applicant has previously had a massage establishment permit, massage therapy technician permit, or any similar license, certificate, or permit revoked by the city or any public agency;
- “(5) The applicant is found to have made a material misstatement or omission in the application or in a previous application.
- “(6) The applicant has been successfully prosecuted under the Red Light Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another jurisdiction; or
- “(7) The applicant has been convicted of any of the following offenses during the seven years preceding the date of the application:
 - “(a) Conduct which requires registration under California Penal Code section 290.
 - “(b) Conduct which is in violation of California Penal Code sections 220, 245.3, 245.5, 261, 264.1, 266(h), 266(i), 266(j), 286, 288, 314, 315, 316, 318, 647(a), 647(b), or 647(d).
 - “(c) Crimes that are designated in California Government Code section 51032(b).
 - “(d) Any other crime involving dishonesty, fraud, deceit, violence, or moral turpitude.
 - “(e) Conspiracy or attempt to commit any of the aforementioned designated offenses.
 - “(f) Convictions to a charge of a violation of California Penal Code sections 415 and 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage therapy.
 - “(g) Convictions that have been expunged and convictions under the laws of other jurisdictions which proscribe the same or similar conduct as the afore designated crimes shall be reported.
 - “(h) Been convicted of a Health and Safety Code section 11550 or any offense involving the illegal sale, distribution or possession of a

controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058.

- “(i) Whether the applicant has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal code sections 11225 et seq. or any similar provisions of law in a jurisdiction outside the state.
- “(c) If prosecution is pending against the applicant either for conduct listed in section 6-10.11 or for conduct violating this Article’s provisions, the Chief of Police may postpone decision on the application until the final resolution of the prosecution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or administrative action maintained by the City of Hayward City Attorney.
- “(d) The Chief of Police may postpone decision on a license or permit application until the City of Hayward receives the applicant’s fingerprint review results from the California Department of Justice.
- “(e) The Chief of Police shall give written notice of the grounds for denial to the applicant personally or by first class mail, postage prepaid, at the address provided in the application. The notice shall advise the applicant of the right to appeal the decision.

“SEC. 6-10.11 DISQUALIFYING CONDUCT.

- “(a) Conviction of, or entry of a plea of guilty or no contest to, an offense that requires registration under California Penal Code section 290, or which is a violation of sections 266(i), 314, 315, 316, 318 or 647(b) or the sections in Part 1, Title 9, Chapters 7.5 or 7.6 of the Penal Code or equivalent offenses under the laws of another jurisdiction, or any offense involving sexual misconduct with children or adults, even if expunged pursuant to Penal Code section 1203.4;
- “(b) Conviction of, or entry of a plea of guilty or no contest to, an offense involving the sale of a controlled substance specified in sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11358 through 11363 or 11378 through 11380 of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code section 1203.4;
- “(c) Conviction of, or entry of a plea of guilty or no contest to, a violation of Penal Code section 415 as a result of an arrest for violation of Penal Code section 647(b).

“SEC. 6-10.12 HEARING ON DENIAL OF PERMIT. If a permit for a massage establishment or massage therapy technician is denied, an applicant may, within seven calendar days after such action is taken, request a hearing before the Chief of Police, at which time evidence will be received for the purpose of determining whether the action of the Chief of Police in denying the issuance of an annual permit should be sustained or reversed. The Chief of Police

shall render his/her decision, in writing, within seven calendar days after the hearing has been concluded.

"SEC. 6-10.13 GROUNDS FOR SUSPENSION OR REVOCATION OF PERMIT. The Chief of Police may revoke or suspend any permit granted under this Article if any of the following are found:

- "(a) The permittee does not possess the qualifications for the permit as required by this Article;
- "(b) The permittee has been convicted of any violation of any provision of this Article;
- "(c) The permittee has engaged in conduct or operated a massage establishment or has engaged in conduct as a massage therapist in a manner which violates this Article, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit;
- "(d) There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a permit or in any supplementary material;
- "(e) An activity authorized in the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public; or
- "(f) Upon a recommendation from the city and/or county officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health.
- "(g) For purposes of this section, permittee, in the case of a massage establishment, shall include the managing responsible officer or managing employee.

"SEC. 6-10.14 HEARING ON SUSPENSION OR REVOCATION OF PERMIT. Prior to the suspension or revocation of any permit issued pursuant to this Article, a hearing as provided in section 6-10.12 of this Article, shall be held by the Chief of Police, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended or revoked, or whether the permit may be retained. The Chief of Police shall render his/her decision with seven calendar days after the hearing has been concluded.

"SEC. 6-10.15 BURDEN OF PROOF. Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or permittee in any hearing or other matter under this Article.

"SEC. 6-10.16 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT. Appeal from the decision of the Chief of Police to suspect or revoke a permit pursuant to section 6-10.12 may be appealed to the City Manager within seven calendar days of the decision of the Chief of Police.

"SEC. 6-10.17 MINIMUM AGE REQUIREMENT.

- “(a) No person shall be employed in a massage therapy business or perform massage therapy or manage or hold an ownership interest in a massage therapy business who is not at least 18 years of age.
- “(b) It is unlawful for the owner, proprietor, managing employee, or any other person in charge of any massage establishment to employ any person under eighteen (18) years of age.

“SEC. 6-10.18 PERMITS NONASSIGNABLE. No permit shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void.

“SEC. 6-10.19 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING.

- “(a) No permittee shall operate under any name or conduct any massage establishment under any designation or location not specified in the permit.
- “(b) In the case of any proposed change of name, notification thereof shall be made to the Chief of Police within 30 calendar days prior to the change. Any proposed change of name is subject to the approval of the Chief of Police.
- “(c) Any proposed change of location of a massage establishment is subject to the approval of the Chief of Police, in addition to compliance with all city ordinances and regulations.
- “(d) Any application for an expansion of a building of a massage establishment shall require compliance with this Article and all other applicable laws.

“SEC. 6-10.20 DISPLAY OF PERMIT.

- “(a) The massage establishment permit and a copy of the permit of each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises.
- “(b) Each massage therapy technician permittee shall be issued a photograph identification badge from the Police Department which shall also serve as a massage therapy technician permit. When visiting a location other than a massage establishment in order to give a massage, each massage therapy technician permittee shall display the badge on such permittee’s person, except when the permittee is giving a massage.

“SEC. 6-10.21 FACILITIES AND OPERATING REQUIREMENTS.

- “(a) Every massage establishment and every massage therapy technician shall comply with standards established by the Alameda County Health Services for such businesses and practitioners and the following facilities and operations requirements:
- “(1) The massage establishment’s premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.
 - “(2) Massage establishments and massage therapy technicians shall at all times have an adequate supply of clean sanitary towels, coverings, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate receptacles.
 - “(3) In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
 - “(4) All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
 - “(5) If separate dressing rooms are offered, they may be occupied by no more than one person at a time. Dressing rooms need not be separate from the room in which the massage therapy is being performed.
 - “(6) Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
 - “(7) A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.

- “(b) Massage therapy shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage establishment shall be open and no client shall be in the establishment between 10:00 p.m. and 7:00 a.m.
- “(c) No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.
- “(d) Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the substance.
- “(e) No owner, manager, operator, responsible managing employee, or permittee shall permit, and no massage therapy technician contractor shall offer or perform, any service other than those permitted under this Article.
- “(f) No permittee or employee of a massage establishment shall:
 - “(1) Expose the sexual or genital part of the permittee or employee in the course of a massage therapy; or
 - “(2) Touch or expose the sexual or genital part of any other person in the course of a massage therapy.
 - “(3) Perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron. Sexual and genital parts shall include the genitals, pubic area, anus, perineum of any person and the breasts of any female.
 - “(4) Perform any task or service associated with the massage establishment while nude, semi-nude, or dressed in lingerie, see-through or transparent attire.
- “(g) No permittee or employee of a massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available that is prohibited under this Article nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Article.
- “(h) The use or possession of adult-oriented merchandise in or on any part of a massage establishment is expressly prohibited.
- “(i) Condoms must not be kept or used for any purpose in the massage establishment.
- “(j) Recordings.
 - “(1) No electrical, mechanical or artificial device shall be used by the operator and/or manager, massage therapy technician or any employee of the

massage establishment for audio and/or video recording or for monitoring the performance of a massage therapy, or the conversation or other sounds in the massage rooms without the knowledge and written consent of the patron.

“(2) Surveillance cameras may not be installed on the exterior of the massage establishment. Other surveillance cameras must not be maintained or operated so as to provide surveillance of the exterior of a massage establishment or the surrounding area.

“(k) Locks prohibited.

“(1) No massage therapy shall be conducted within any cubicle, room, booth or treatment room on the premises of a massage therapy business which is fitted with a lock.

“(2) All exterior doors on the premises of a massage therapy business shall remain unlocked during business hours.

“(l) All massage services shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

“(m) A massage establishment must not be used for residential or sleeping purposes.

“(n) No person other than the client and the client’s immediate family or guardian is allowed in the massage room while the client is dressing or undressing.

“(o) No person other than the client, the massage technician assigned to the client, and the client’s immediate family or guardian are allowed in the massage room if any door into the massage room is closed. Others may be in the massage room so long as all doors to the room are fully open.

“(p) Massage establishment personnel or any massage technician must not inquire as whether any client is a peace officer.

“SEC. 6-10.22 RESPONSIBILITY OF EMPLOYER.

“It shall be the responsibility of the massage establishment permittee who employs or allows any person acting or purporting to act as a massage therapy technician, or the employer of any person acting or purporting to act as a massage therapy technician, to ensure that such person complies with the requirements of this Article and all laws.

“The massage establishment permittee shall be held responsible for the conduct of all

persons on the premises who engage in providing the service of massage therapy. Any act or omission of any person giving massage therapy, or any service of massage therapy, shall be deemed the act or omission of the holder of the massage establishment permit for the purposes of determining whether the permit may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a massage establishment permit.

“SEC. 6-10.23 OUT-CALL MASSAGE THERAPY PERMIT. It shall be unlawful for any massage establishment or massage therapy technician to provide, or to offer to provide, massage therapy at any location except at the place of business approved in the permit for a massage establishment or massage therapy technician; provided, however that a massage establishment or massage therapists may obtain approval from the Chief of Police, specifically authorizing out-call massage therapy services.

“SEC. 6-10.24 PERMIT DURATION AND RENEWAL.

- “(a) A permit shall be valid for two years from the date of issuance unless revoked or suspended.
- “(b) A permittee may apply for a renewal of a permit 30 calendar days prior to the expiration of the permit. If, upon the 31st day after the expiration of a permit, an application of renewal has not been received, the permit shall be deemed expired. Any permit issued under this Article shall be returned to the Chief of Police within 48 hours of its expiration. No privilege to provide massage therapy shall exist until an application for renewal has been granted. After a permit expires, a new application may be filed.
- “(c) Permits may be renewed by filing an application for renewal under penalty of perjury updating information in the original application provided to the Chief of Police.
- “(d) Verification of continued membership, in good standing, of a state or national professional associations described in section 6-10.05(c) of this Article.
- “(e) To renew a permit under this Article, the permittee shall pay the city a nonrefundable fee in an amount set forth by resolution of the City Council. A copy of the receipt for the nonrefundable fee shall accompany the application for renewal.
- “(f) After investigating the application for renewal, the Chief of Police shall renew the permit if the permittee continues to meet the requirements for the issuance of a permit, and none of the grounds for denial of a permit set forth in this Article

exist. The Chief of Police shall renew the permit within 30 calendar days of such request if the information upon which the original application was granted remains unchanged and no violations of this Article have been committed.

“SEC. 6-10.25 APPLICABILITY TO EXISTING BUSINESSES.

- “(a) All persons currently holding a valid massage establishment or massage therapy technician permit shall have six months following the enactment of this Ordinance in which to comply with the requirements of this Article. Except as provided in section 6-10.25(b), if a permittee does not attain compliance with this Article within the prescribed time limits, the Chief of Police shall immediately suspend or revoke the permittee’s permit(s).
- “(b) The Chief of Police may issue a provisional permit to any massage establishment or massage therapy technician, for a period not to exceed six months, if the applicant is able to show that substantial compliance with the requirements of this Article has been met and that the remaining compliance can be achieved within the period of the provisional permit. This six-month provisional permit shall not be renewed.

“SEC. 6-10.26 CEASE OF BUSINESS. If at any time during the duration of a permit issued under this Article a permittee ceases to do business as a massage establishment and/or a massage therapy technician, the permittee shall:

- (a) Return any permit issued under this Article to the Chief of Police within five business days; and
- (b) Notify the Revenue Division of the Finance Department.

“SEC. 6-10.27 INSPECTION. The Police Department shall, from time to time and during regular business hours, make an inspection of each massage establishment for the purpose of determining compliance with this Article.

“SEC. 6-10.28 ENFORCEMENT.

- “(a) It is the duty of the Chief of Police to enforce rules and regulations in accordance with this Article.
- “(b) Pursuant to the city’s prosecutorial discretion, the city may enforce violations of the provisions of this Article as criminal, civil and/or administrative actions.

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the

remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 calendar from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 25th day of April, 2006, by Council Member_____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the____ day of May, 2006, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:
Mayor of the City of Hayward

DATE:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward